

Nuclear Regulatory Commission Policy and Procedure for Preventing and Eliminating Harassing Conduct in the Workplace

I. Purpose

This Policy is intended to ensure that the Nuclear Regulatory Commission (NRC) takes appropriate action to accomplish the following:

Prevent sexual harassment and other forms of harassing conduct based on race, color, religion, sex, national origin, age, disability, sexual orientation, and retaliation for engaging in protected Equal Employment Opportunity (EEO) activity in the workplace;

Ensure that employees, supervisors, and managers are aware of their rights and responsibilities in maintaining a work environment that is free from harassing conduct and the options available for reporting claims of harassing conduct;

Provide an expedited impartial process for reviewing allegations of harassing conduct as defined in this Policy;

Correct harassing conduct, as defined in this Policy, before it becomes severe or pervasive; and

Administer corrective action, which may include disciplinary action, to an employee who violates this Policy.

This Policy updates the Agency's long-standing policies on the prevention of sexual harassment in the workplace. It is separate and apart from any collective bargaining agreement (CBA) or statutory complaint process, or other Agency policy involving harassment. [See Section X.] Furthermore, this Policy does not alter the right of an employee to report harassing conduct to the Office of the Inspector General (OIG) or to file a complaint with the Office of Small Business and Civil Rights (SBCR).

II. Authorities

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-16 (Title VII); the Age Discrimination in Employment Act of 1967, 29 U.S.C. 633a (ADEA); the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791; Executive Order (E.O.) 11478, as amended by Executive Order 13087, May 28, 1998; Equal Employment Opportunity Commission's (EEOC) Model EEO Programs Must Have An Effective Anti-Harassment Program (2005); EEOC's Manual Directive 715 (2003); EEOC's Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors (1999); Faragher v. Boca Raton, 514 U.S. 775 (1998); and Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998.)

III. The Definition of Harassing Conduct

For purposes of this Policy, harassing conduct is defined as any unwelcome verbal,

visual, physical or other conduct based on race, color, religion, gender (whether or not of a sexual nature), national origin, age, disability, sexual orientation or retaliation based on opposition to discrimination or participation in the EEO complaint process under either of the following conditions:

- A. The behavior reasonably can be considered to adversely affect the work environment; or
- B. An employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

Examples of unwelcome prohibited conduct under part A of the definition include, but are not limited to: offensive remarks or comments; ridicule; offensive and derogatory words, phrases, epithets, or jokes; suggestive comments and unwelcome requests for sexual favors; exposure to offensive photographs, explicit drawings, cartoons, e-mails, or internet transmissions; touching; pinching; grabbing; gesturing; or stalking.

Examples of unwelcome prohibited conduct under Part B of the definition includes, but are not limited to: promoting or not promoting an employee; or taking or not taking a personnel action affecting the employee's conditions of employment based on the employee accepting a date or sexual favor.

IV. Policy

It is the Policy of the NRC that harassing conduct by anyone in the workplace is unacceptable and will not be condoned. NRC will maintain a work environment free from the harassing conduct described above. The NRC has determined that the most effective way to maintain such a work environment is to inquire promptly into allegations of harassing conduct and, if proven true, treat the offense as misconduct, even if it is not sufficiently severe or pervasive to constitute discriminatory harassment actionable under the civil rights laws.

The current EEO complaint process provides employees specific remedies for unlawful harassment that has already occurred. This NRC Policy, however, is focused on stopping harassing conduct at its earliest stage. A hostile environment that violates EEO law usually requires a showing of a pattern of offensive conduct. Under this Policy, however, the NRC will not wait, nor should the employee wait, for such a pattern to emerge. The NRC will, where possible, act to stop and correct harassing conduct before it becomes unlawful, that is, before it becomes so pervasive or severe as to create an unlawful hostile work environment. Accordingly, the NRC encourages all employees to report any incident of harassing conduct forbidden by this Policy immediately so that complaints can be resolved quickly and fairly. If the NRC is not made aware of harassing conduct, it cannot stop it.

In addition, NRC will not tolerate retaliation against any employee who makes a good faith report of harassing conduct under this Policy or any other policy or procedure, or for assisting in any inquiry about such a report. Allegations of retaliation will be handled in accordance with the procedures outlined in this Policy.

Allegations of harassing conduct will be addressed as promptly as possible. Employees found to have violated this Policy will be held accountable for their actions and may be appropriately disciplined in accordance with 5 U.S.C. Chapter 75.

V. Roles and Responsibilities

A. Agency Employees

Each Agency employee is responsible for creating and maintaining a work environment that is free from harassing conduct by:

1. Complying with the Policy;
2. Attending a briefing on this Policy and Procedures;
3. Refraining from exhibiting harassing conduct;
4. Promptly reporting any incident of harassing conduct in accordance with the Procedures in Section VI.; and
5. Cooperating with any inquiry conducted under this Policy.

B. Managers and Supervisors

In addition to the requirements in A. above, each Agency manager and supervisor is responsible for creating and maintaining a work environment that is free from harassing conduct by:

1. Handling allegations of harassing conduct promptly and appropriately in accordance with the procedures Section VII.;
2. Providing interim measures to alleged victims of harassing conduct pending the outcome of the inquiry to ensure that further misconduct does not occur;
3. Administering appropriate corrective, including disciplinary action to employees who engage in harassing conduct or who do not carry out their responsibilities under this Policy;
4. Taking action to prevent retaliation against individuals who make good faith reports of an allegation of harassing conduct or participate in any inquiry into an allegation of harassing conduct; and
5. Consulting with the agency Designated Official (DO) with respect to all appropriate actions under numbers 1. through 4., above.

C. Director, Office of Human Resources

The Director, Office of Human Resources (OHR) is responsible for:

1. Ensuring that employees are informed of this Policy and the procedures to follow in connection with reporting harassing conduct by disseminating this Policy statement periodically to all employees and posting it on the NRC intranet website;
2. Ensuring that managers, supervisors, and employees are provided appropriate training on this Policy;
3. Identifying the Designated Official (DO); and
4. Ensuring that the identity of the DO is prominently displayed throughout the agency and on the NRC intranet and the identities of the Regional Personnel Officers are prominently displayed in the Regions.

D. Agency Designated Official

The Agency Designated Official (DO) is responsible for:

1. Assisting the Director, OHR, in ensuring that employees are informed of this Policy and the procedures in connection with reporting harassing conduct;
2. Receiving allegations of harassing conduct reported in accordance with Section VII., below;
3. Determining whether an allegation falls within the jurisdiction of this Policy or otherwise interpreting and implementing this Policy;
4. Referring allegations received under this Policy to the Office of the Inspector General (OIG) for possible investigation;
5. Conducting or overseeing prompt, fair and impartial inquiries into any allegation of harassing conduct. If the OIG decides not to make an inquiry on a referral received under this Policy, the DO has the authority to determine who will conduct the inquiry into any allegation of harassing conduct, including him/herself;
6. Advising managers and supervisors on providing interim measures to alleged victims of harassing conduct pending the outcome of the inquiry to ensure that further harassing conduct does not occur;
7. Advising managers and supervisors on administering appropriate corrective, including disciplinary action, to employees who engage in harassing conduct or who do not carry out their responsibilities under this Policy;
8. Advising managers and supervisors on taking action to prevent retaliation against individuals who report alleged harassing conduct or participate in any inquiry into an allegation of harassing conduct;

9. Deciding whether to arrange for mediation services to resolve a dispute arising under this Policy. Mediation services may be offered from a variety of sources including the DO, the Federal Mediation and Conciliation Service, Office of Small Business and Civil Rights (SBCR), a contract mediator, and the HHS Sharing Neutrals Program;
10. Making the Director, SBCR aware of all allegations of harassing conduct under this Policy and actions taken to address such allegations;
11. Providing technical assistance and support, to assure compliance with this Policy;
12. Maintaining records of all allegations of harassing conduct brought under this Policy in accordance with the Privacy Act 5 U.S.C. 552a; and
13. Informing all persons reporting allegations that filing a report of harassing conduct under this Policy does not satisfy the requirements to initiate an EEO complaint, a Merit Systems Protection Board (MSPB) appeal or a grievance; nor does it delay the time limits for initiating those procedures.

E. Regional Personnel Officer

The Regional Personnel Officer (RPO) is responsible for:

1. Assisting the Director, OHR in ensuring that employees are informed of this Policy and the procedures in connection with reporting harassing conduct;
2. Receiving allegations of harassing conduct reported in accordance with Section VII.;
3. Promptly advising the DO and the Regional Administrator of any allegations reported under this Policy;
4. In coordination with the DO, conducting or overseeing prompt, fair and impartial inquiries into any allegation of harassing conduct;
5. In coordination with the DO, advising managers and supervisors on providing interim measures to alleged victims of harassing conduct pending the outcome of the inquiry to ensure that further harassing conduct does not occur;
6. In coordination with the DO, advising managers and supervisors on administering appropriate corrective, including disciplinary action, to employees who engage in harassing conduct or who do not carry out their responsibilities under this Policy;
7. In coordination with the DO, advising managers and supervisors on taking action to prevent retaliation against individuals who report alleged

harassing conduct or participate in any inquiry in an allegation of harassing conduct; and

8. Maintaining records of all allegations of harassing conduct brought under this Policy in accordance with the Privacy Act, 5 U.S.C. 552a.

F. Director, Office of Small Business and Civil Rights (SBCR)

The Director, SBCR is responsible for:

1. Processing any EEO complaint of discrimination filed under 29 CFR 1614;
2. Providing technical assistance and support, to assure compliance with this Policy;
3. Assisting the Director, OHR in ensuring that employees are informed of this Policy and the procedures in connection with reporting harassing conduct;
4. Assisting the Director, OHR and DO in providing training under this Policy; and
5. Informing the DO of allegations of harassing conduct, to the extent permitted by law and EEO regulation.

G. Office of the Inspector General (OIG)

The OIG is responsible for:

1. Cases referred from the DO: for allegations that it decides to investigate, OIG will conduct an appropriate inquiry; if substantiated, OIG will refer the findings of the inquiry to NRC management for appropriate action;
2. Cases not referred from the DO:
 - A. For allegations that it decides to investigate, the OIG will conduct an appropriate inquiry; if substantiated, the OIG will refer the findings of the inquiry to NRC management for appropriate action;
 - B. For cases it decides not to investigate, the OIG will refer the matter to the DO for action, if any; and
 - C. For record keeping purposes, at the end of any investigation, the OIG will report allegations of harassing conduct to the DO.
3. For all cases in which the OIG conducts an inquiry into harassment allegations or misconduct, the OIG will report situations which it determines warrant prompt NRC management action to the DO.

VI. Reporting Harassing Conduct

The procedures for reporting harassing conduct are as follows:

- A. A headquarters employee who believes that he or she has been the subject of an incident of harassing conduct or who has witnessed harassing conduct and/or retaliation in violation of this Policy must report this matter to anyone in his/her management chain or to the DO;
- B. A regional employee who believes that he or she has been the subject of an incident of harassing conduct or who has witnessed harassing conduct and/or retaliation in violation of this Policy must report this matter to anyone in his or her chain of command, to the DO, or to the Regional Personnel Officer (RPO). The RPO is then be responsible for reporting this matter to the DO;
- C. The employee reporting such conduct will be asked to provide details of the incident(s), including but not limited to: what occurred, when the incident(s) occurred; names of the alleged harasser and names of any witnesses. Once a report of harassing conduct is made under this Policy, the Agency has a duty to conduct an appropriate inquiry, stop harassing conduct if found, and to take appropriate action, including disciplinary action;
- D. Nothing in this Policy is intended to discourage an employee from confronting the alleged harasser and telling him/her to stop the harassing conduct;
- E. Nothing in this Policy is intended to require that an employee confront the alleged harasser;
- F. Nothing in this Policy affects the right of an individual to contact the OIG regarding alleged harassing behavior; nor does it affect the right of an individual to participate in the EEO complaint process, file an appeal with the MSPB, an Agency administrative grievance, or for bargaining unit employees, initiate a grievance under the NRC-NTEU CBA. Filing a report of harassing conduct under this Policy does not satisfy the requirements associated with any complaint, appeal or other statutory or regulatory process that may apply, nor does it delay the time limits for initiating those procedures. Section X. provides further information on statutory and collective bargaining claims; and
- G. All information will be maintained in compliance with the Privacy Act, 5 U.S.C. 552a, as stated in Section IX. of this Policy.

VII. Conducting an Inquiry

- A. A supervisor or manager who receives an allegation or witnesses harassing conduct shall immediately:
 - 1. Inform the DO of the allegation;
 - 2. In consultation with the DO, take appropriate action to stop any harassing

conduct and prevent further misconduct while the allegations are being investigated, i.e., providing appropriate interim measures; and

3. Document the allegation received or witnesses and his/her efforts to address it.
- B. If the RPO receives an allegation of harassing conduct, s/he will promptly notify the DO and the Regional Administrator and provide further assistance as requested by the DO.
- C. When the DO receives an allegation of harassing conduct, either directly by the complainant or through a supervisor, manager, RPO, or from other sources, the DO will:
1. Ensure that the OIG is immediately provided all pertinent information regarding the allegation;
 2. In the event that the OIG elects not to investigate the matter, the DO shall ensure that a prompt, vigorous, impartial and appropriate inquiry is conducted and designate the person(s) who will conduct such an inquiry. (This inquiry may be conducted by the DO, the supervisor, the RPO, an outside contractor, or any other impartial individual delegated this responsibility by the DO); and
 3. Contact appropriate Agency officials in the alleged harasser's chain of command who are not involved in the allegations of harassment and recommend appropriate action to stop any harassing conduct and prevent further harassing conduct while the allegations are being addressed, i.e., providing appropriate interim measures.
- D. The inquiry will consist of appropriate fact-finding in order to obtain the information relevant to the allegation. As part of the inquiry, the complaining employee may be interviewed regarding the basis of the allegations. Additionally, the alleged offender(s) as well as other witnesses who may have knowledge of the circumstances of the allegations may also be interviewed. The determination as to the appropriate steps to be followed during the inquiry will be determined by the person conducting the inquiry with oversight by the DO. All individuals contacted in the course of an inquiry will be advised that any retaliation or reprisal against an individual who is an alleged target of harassing conduct, who has made a complaint under this Policy, or who has provided information in connection with a complaint, constitutes a separate violation of this Policy. The inquiry will be completed promptly absent extenuating circumstances.
- E. An inquiry is a neutral fact finding process needed to determine whether harassing conduct has occurred. An inquiry shall not, in and of itself, be construed as evidence that the allegations of harassing conduct are true.

- F. When an inquiry by management discloses new, significant information regarding allegations of misconduct, by management or employees, the OIG will be notified of these additional facts and provided an opportunity to assume jurisdiction over the matter. However, this is not intended to preclude NRC management from taking appropriate immediate action to carry out its responsibilities to maintain a safe and orderly workplace or to otherwise protect Agency interests associated with this Policy.
- G. Upon completion of the inquiry, the individual conducting the inquiry will prepare a written summary of the inquiry. (The summary may be brief, depending on the complexity and seriousness of the case. The DO shall determine whether sworn declarations will be taken). The summary will be prepared promptly after completion of the inquiry. The summary, along with all of the documentation compiled during the inquiry, will be provided to the DO (if he/she did not conduct the inquiry) and generally the first level supervisor of the alleged harasser, unless such supervisor is involved in the allegation. In this situation, the summary and documentation will be provided to the lowest level supervisor/manager in the alleged harasser's chain of command who is not a subject of the inquiry.
- H. All information will be maintained on a confidential basis to the greatest extent possible and in compliance with the Privacy Act, 5 U.S.C. 552a, as stated in Section IX. of this Policy.

VIII. Action To Be Taken Upon Completion Of The Inquiry

- A. Upon receipt of the report of inquiry, including summary and supporting documentation, the appropriate supervisor/manager will promptly evaluate all of the documentation and determine the appropriate action. This responsibility normally will rest with the first line supervisor of the employee alleged to have engaged in the harassing conduct, unless such supervisor is involved in the allegation. The supervisor/manager should consult with the OHR, including the DO, the servicing Labor and Employee Relations Specialist, and the Office of General Counsel as needed to determine the appropriate action.
- B. Where the inquiry establishes that an employee did engage in harassing conduct under this Policy, s/he will be subject to appropriate corrective action, disciplinary or otherwise, in accordance with 5 U.S.C. Chapter 75.
- C. Where the inquiry establishes that a supervisor or manager did not properly carry out the responsibilities under this Policy, s/he will be subject to appropriate corrective action, disciplinary or otherwise, in accordance with 5 U.S.C. Chapter 75.
- D. The DO should notify SBCR and the OIG of the outcome of the agency inquiry, including whether the allegation was substantiated; what corrective action was taken; and any other action taken to address the matter.

IX. Confidentiality

The maintenance of record and disclosures of information from records shall be in complete compliance with the Privacy Act, 5 U.S.C. 552a. All information obtained under this Policy, including but not limited to, reports of harassing conduct, will be maintained confidentially to the greatest extent possible. Such information, however, may be required to be disclosed in connection with proceedings resulting from the harassing conduct, e.g., disciplinary action. Further, information may need to be disclosed to those officials and employees within the Agency with a need to know in order to carry out the purpose and intent of this Policy.

X. Statutory and Collective Bargaining Claims

This Policy is in addition to statutory and collective bargaining prohibitions [NRC-NTEU CBA, Article 2] against harassment and the procedures and remedies they provide for addressing unlawful harassment. Filing a report of harassing conduct under this Policy **does not** satisfy the requirements to initiate any complaint, appeal or other statutory or regulatory process that may apply, **nor does it delay the time limits** for initiating those procedures. An employee who chooses to pursue statutory or collective bargaining remedies for unlawful harassment must:

1. Initiate the EEO complaint process pursuant to 29 C.F.R. 1614.105 (available for all claims of unlawful harassment other than those based on sexual orientation) by contacting an EEO counselor in the SBCR within 45 calendar days from the date of the alleged harassment (or personnel action if one is involved); or
2. File a grievance under the CBA, Article 51 or Agency grievance procedure; or
3. File an appeal to the MSPB within 30 days of an appealable action as defined in 5 C.F.R. Section 1201.3.;
4. If an employee pursues a claim of harassment through the formal EEO process (including EEO counseling), an MSPB appeal, a union grievance, or an administrative grievance, the Agency official who receives the information about such a claim will promptly notify the DO, unless inconsistent with applicable requirements. Because the Agency has an obligation to comply with the terms of this Policy regardless of whether a statutory or collective bargaining procedure has been invoked, the DO will promptly initiate an inquiry into the matter if an appropriate management official has not already done so. Similarly, the DO will provide the Office handling the statutory or collective bargaining claim the record of actions taken under this Policy.